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## Sight, Sound, and Stereotype: The War on Terrorism and Its Consequences for Latinas/os

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### Recommended Citation

Steven W. Bender, Sight, Sound, and Stereotype: The War on Terrorism and Its Consequences for Latinas/os, 81 *OR. L. REV.* 1153 (2002).

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## Sight, Sound, and Stereotype: The War on Terrorism and Its Consequences for Latinas/os

In the days and weeks following the September 11 terrorist attacks, reports emerged of hate crimes, discrimination, and profiling directed at Arab Americans, Arabs, and Muslims in the United States.<sup>1</sup> Although aware that the primary targets of the public and private response against terrorism were those of Arab or Muslim appearance, I realized that the backlash within the United States also affected Latinas/os and certain other subordinated groups. This Article grew out of my concern that while Latinas/os at first might be deemed “safe” by the American public,<sup>2</sup> their negative societal construction made their targeting inevitable as the fervent, amorphous war on terrorism took shape.<sup>3</sup> Below I detail perceptions of Latinas/os in society’s imagination

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\* Professor of Law, University of Oregon School of Law. In writing this article, I benefitted from presentations at the University of California at Davis School of Law, and Golden Gate University School of Law. I also presented my paper as part of the LatCrit VII concurrent program: Post 9-11 Borderlands/Fronteras: Immigration, Terrorism, and Democracy. Parts of this article will be republished in a forthcoming book, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION*, to be published in 2003 by New York University Press.

<sup>1</sup> Susan M. Akram & Kevin Johnson, “*Migration Regulation Goes Local: The Role of States in U.S. Immigration Policy*,” *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295, 295-96 (2002) (noting that the Council on American-Islamic Relations had reported over 1700 such hate crimes between September 11 and February 8, 2002); William Clark Harrell, *Federal and State Law Encroachment on Individual Rights*, 4 SCHOLAR 191, 197 (2002); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002) (detailing widespread hate crimes and racial profiling against those appearing “Middle Eastern, Arab, or Muslim”).

<sup>2</sup> See Volpp, *supra* note 1, at 1584 n.30 (suggesting any post-September 11 passage of Latinas/os and certain other subordinated groups as “Americans” will be a momentary phenomenon).

<sup>3</sup> Earlier, the longrunning Cold War impeded activism by Latina/o farmworkers, whose leaders were branded Communists. Similarly, the war on terrorism can be used to justify keeping subordinated groups in their place.

that might be relied upon to justify their inclusion in the war on terrorism. After reviewing the potential negative consequences for Latinas/os of government and private action against terrorism, I assess the opportunities for positive transformation of our societal values in the quest to define nationhood after September 11.

## I

### CONSTRUCTING LATINAS/OS AS A TERRORIST THREAT

Even before September 11, the dominant view of Arab Americans, and of Muslims, was that they were violent terrorists, disloyal to the United States, and waging a holy war against America and other enemies.<sup>4</sup> Prior terrorist attacks had galvanized public opinion against Arabs and Arab Americans as a whole—in a 1991 poll conducted during the Gulf War, fifty-nine percent of Americans associated Arabs with terrorists, fifty-eight percent with violence, and two-thirds felt there were too many Arab immigrants.<sup>5</sup> Latinas/os too are not immune from these negative sentiments. Given their societal construction as violent, foreign, criminal-minded, disloyal, and as overrunning the border,<sup>6</sup> there are numerous grounds by which Americans might similarly construct Latinas/os as a terrorist threat.

Because undocumented immigrants are now seen as a national security threat, as would-be terrorists, the longstanding association of Latinas/os with “illegal aliens” may cause Americans to view Latinas/os with suspicion. Even if not viewed as terrorists themselves, Latina/o immigrants have been called into question for their supposed willingness to aid terrorists in anti-American plots. Consider the remarks of the head of a Utah anti-undocumented immigrant group applauding the pre-Winter Olympics sweep of undocumented airport workers in Salt Lake City, most of them Latina/o:

[T]his may be stereotyping, but, if you go to an illegal Mexican

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<sup>4</sup> Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the “Racing” of Arab Americans as “Terrorists,”* 8 ASIAN L.J. 1, 12 (2001); Seth Hilton, *American Conceptions of the Middle East and Islam*, 1 U.C. DAVIS J. INT’L L. & POL’Y 355 (1995).

<sup>5</sup> Michael Paulson, *U.S. Attitudes Toward Arabs Souring, According to Poll*, Boston Globe, Sept. 29, 2001, at A5.

<sup>6</sup> See generally STEVEN W. BENDER, GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION (forthcoming 2003).

working at the airport, and he has access to airplanes, or he's manning a baggage check or whatever, and an Arab terrorist walks up to him and says, "I'll give you \$10,000 if you plant a 9-millimeter on the airplane for me," well, here's an individual who's never stood up, held his hand over his heart and said, "I pledge allegiance to the flag and to the country for which it stands." You think that Mexican is going to head south with the 10 grand? You betcha.<sup>7</sup>

Other avenues exist toward a societal profiling of Latinas/os as a security or terrorist threat. Fueled by television and cinema, the societal association of Latinas/os with drugs<sup>8</sup> could shape a conception of Latinas/os as "narco-terrorists."<sup>9</sup> Following the September 11 terrorist attacks, drug producing and drug smuggling operations have come to be viewed as terrorist organizations. In February 2002, the Office of National Drug Control Policy announced its initiative to educate Americans on the link between illicit drugs and international terrorism. Pursuant to this campaign, two commercials debuted during the 2002 Super Bowl warning drug users that they were financing terrorists. According to Congressman Mark Souder (R-IL), "Americans who buy and sell illegal narcotics are lending a helping hand to people like those who attacked America on September 11."<sup>10</sup> In order to justify military intervention and policing measures in the national and international war on drugs, government officials need only point to the funding of al-Qaeda terrorist campaigns with proceeds from heroin produced in Afghanistan, a world leader in opium production.

As a Presidential candidate, Richard Nixon announced that he would wage a "war" on drugs. As President he deployed customs agents at the Mexican border as part of Operation Intercept to curtail drug smuggling. In 1986, President Ronald Reagan issued a security directive classifying drugs, for the first time, as a national security threat.<sup>11</sup> But Latinas/os in Texas remember the

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<sup>7</sup> Kim Murphy, *Olympic Hospitality an Irony for Utah Latinos*, L.A. TIMES, Feb. 8, 2002, at A1 (quoting a statement made by Ken Thompson).

<sup>8</sup> See generally BENDER, *supra* note 6, at ch. 4.

<sup>9</sup> Professor Carmen Gonzalez, Remarks at LatCrit VII Plenary Session "Political Violence, 'Terrorism,' and the Criminalization of the Other" (May 3, 2002) (suggesting the term "narco-terrorists").

<sup>10</sup> Press Release, Office of National Drug Control Policy, National Youth Anti-Drug Media Campaign Links Drugs and Terror (Feb. 3, 2002), at <http://www.whitehousedrugpolicy.gov/news/press02/020302.html>.

<sup>11</sup> PETER ANDREAS, BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE 43 (2000); see generally Frank Rudy Cooper, *The Un-Balanced Fourth Amendment: A*

tragic consequence of militarizing enforcement against drugs, especially when it involves placing military troops along the U.S.-Mexico border. In May, 1997, a camouflaged squad of U.S. Marines patrolling near the Rio Grande on an anti-drug assignment shot and killed teenager Ezequiel Hernandez who was tending goats on horseback as part of a church project. Ezequiel, who hoped to become a park ranger, carried an old pump-action .22 rifle to fend off rattlesnakes and predators. Although the Marines claimed that Ezequiel fired at them and they acted in self-defense, Ezequiel was shot in the side, an angle inconsistent with this account. More chilling still, while the Marines waited twenty-two minutes before rendering first aid or calling for emergency help, young Ezequiel bled to death.<sup>12</sup> As a consequence of the shooting, then Defense Secretary William Cohen ordered the disarmament of all federal troops engaged in anti-drug missions at the border. Though it may be forgotten in the haste to fight terrorism, Ezequiel's death provides "smoking gun" evidence of the folly of militarizing the Mexican border.

In addition to their societal association with drug trafficking, Mexican Americans<sup>13</sup> have been linked to terrorism by at least two other avenues—a revisioning of their longstanding bandido construction, and their supposed affinity with the villainized image of suicide bombers that has come to define America's view of Palestinians. Within days after September 11, the media began to suggest the parallels between the hunt launched in Afghanistan for Osama bin Laden and the major military mission initiated in 1916 to hunt Mexican General Francisco "Pancho" Villa in Northern Mexico. A former ally of the United States, as was bin Laden, Villa attacked a New Mexico town in early 1916

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*Cultural Study of the Drug War, Racial Profiling and Arvizu*, 47 VILL. L. REV. 851 (2002).

<sup>12</sup> Nick Gillespie, *Poor Results, Risky Tactics, A Good Time to Re-evaluate Border Policy*, ARIZONA REPUBLIC, June 30, 1997, at B5; *Marines Delayed Calling Medical Aid in Border Shooting, Texas Ranger Says*, ARIZONA REPUBLIC, June 21, 1997, at A4. The Marine who fired the fatal shot was investigated by a local grand jury and the Justice Department but not charged; a lawsuit by Ezequiel's family resulted in a substantial settlement from the federal government.

<sup>13</sup> The most vivid small screen depiction to date of Mexicans and Mexican Americans as drug dealers is the 2003 NBC miniseries *Kingpin*. American media also constructs Puerto Ricans, Cuban Americans, and Latinas/os of other origins as drug dealers and drug users. See generally BENDER, *supra* note 6, at ch. 4 (describing films depicting drug dealers of Mexican, Puerto Rican, Cuban, Colombian, and Dominican backgrounds).

killing seventeen Americans<sup>14</sup> while stealing horses and guns. Villa's motivation for the raid remains unclear. Most suggest that a change in United States' policy which had previously supported Villa's endeavors in Mexico with guns and arms led him to attack the town that had formerly supplied him with weapons. A few even suggest that the United States government orchestrated the raid by payment to Villa hoping to spark military enlistment and patriotism toward American involvement in World War I. Whatever the raid's motivation, President Woodrow Wilson responded by mobilizing as many as 150,000 troops, and sending battalions into Mexico with horses, tanks, trucks, and open-cockpit planes in a failed effort to find Villa in the hill country of Chihuahua, Mexico.<sup>15</sup> Post-September 11 comparisons between Villa and bin Laden were drawn not merely for the similarities in an unfruitful search by the American military, but also for the terrorist identity of both men. For example, a relative of one of the dead in New Mexico suggested that while Villa was considered a "bandit" back then, "[b]y today's terms, he was a terrorist."<sup>16</sup> Emerging from the physical, cultural, political, and economic displacement of Mexicans in the U.S.-Mexico war and thereafter, the real-life bandidos at the time have now been revisioned by some as bin Laden-like terrorists.

In the 1970s, the Brown Berets, a paramilitary group of Chicanas and Chicanos dressed in army fatigues and brown berets, modeled after the Black Panthers, helped create a stereotype of Chicanas/os as violent activists.<sup>17</sup> Today, some American vigilantes frustrated with the government's inability to bring bin Laden to justice have resurrected this image of the violent Chicana/o to construct Mexican Americans and other Latinas/os as a more accessible terrorist enemy on American soil. College campus MEChA organizations, comprised mostly of Chicana/o students, but also of other Latinas/os, have been targeted by hate speech that compares their organizations to al-Qaeda. Ostensibly, these vigilantes point to the supposed campaign by MEChA organiza-

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<sup>14</sup> News reports on the number of Americans killed in the raid on Columbus differ; some put the number as seventeen, others eighteen. The Mexican government later compensated the families of the victims.

<sup>15</sup> See generally, *The Hunt for Pancho Villa* (PBS Video, 1993).

<sup>16</sup> Ollie Reed Jr., *Villa the Terrorist?*, ALBUQUERQUE TRIBUNE, Feb. 28, 2002, at A1.

<sup>17</sup> IGNACIO M. GARCÍA, *CHICANISMO: THE FORGING OF A MILITANT ETHOS AMONG MEXICAN AMERICANS* 106-07 (1997).

tions to liberate the Southwest from the United States and return it to Mexico, as reflected in *El Plan Espiritual de Aztlán* from 1969, an activist Chicana/o manifesto, which provides in part:

In the spirit of a new people that is conscious not only of the proud historical heritage but also of the brutal "gringo" invasion of our territories, we, the Chicano inhabitants and civilizers of the northern land of Aztlán from whence came our forefathers, reclaiming the land of their birth and consecrating the determination of our people of the sun, declare that the call of our blood is our power, our responsibility, and our inevitable destiny . . . .

Brotherhood unites us, and love for our brothers makes us a people whose time has come and who struggles against the foreigner "gabacho" who exploits our riches and destroys our culture . . . .<sup>18</sup>

A hate e-mail sent to a West Coast campus MEChA organization quoted part of this *Plan de Aztlán* in contending that MEChA is a "terrorist organization" of "evil terrorists . . . no better than Osama Bin Laden" seeking to "destroy the country."<sup>19</sup> In April 2002, I was interviewed by a conservative talk radio show host in Portland, Oregon who strove to construct Chicana/o college students as terrorist operatives. He drew a connection between the struggles of Palestinians for land and nationhood in the West Bank and the supposed Chicana/o mission to reclaim Aztlán, enabling him to transfer his construction of all Palestinians as suicide bombers to Chicanas/os and other Latinas/os by asking me the absurd question: "When will the suicide bombings start in Aztlán?"

After September 11, not only Mexican "bandidos" but also urban Latina/o "gangbangers" are being revisioned as terrorists. This threatening image has roots that extend to media and societal conceptions in 1940s Los Angeles of Mexican American youth known as "Pachucos" who were vilified in local newspapers as a foreign-sourced threat during World War II, leading to the so-called Zoot Suit Riots in which off-duty Anglo servicemen, and Anglo civilians, stormed barrio neighborhoods to assault these Latino youth. The recent arrest of Puerto Rican Abdullah al Muhajir, formerly Jose Padilla, once a gang member

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<sup>18</sup> Carlos Villarreal, *Culture in Lawmaking: A Chicano Perspective*, 24 U.C. DAVIS L. REV. 1193, 1214 (1991).

<sup>19</sup> E-mail from MerchantBen@aol.com to University of Oregon MEChA (June 17, 2002) (on file with author).

in Chicago, has come to represent the association of Latino gang members with terrorist operatives. Padilla has been held in military prison as an "enemy combatant" while being interrogated for his role in planning a potential "dirty bomb" attack.<sup>20</sup> A former FBI deputy director of counterterrorism made the leaps from Latina/o ethnicity to Latina/o gang membership to terrorism seem like baby steps in contending "[i]f you look at Padilla's background—Puerto Rican, gang member, time in prison, a convert to Islam—what you see is a potential resource for al-Qaeda."<sup>21</sup> Because the public views Latinas/os of all origins, particularly Mexican Americans and Puerto Ricans, as gang members, this association of gangbangers and terrorists provides yet another societal linkage between Latinas/os and terrorism.

The history of struggle for Puerto Rican self-determination presents another possibility for constructing Puerto Ricans as terrorists. Particularly in the 1950s, and again in the 1970s and early 1980s, media coverage of violence in the United States by pro-independence supporters prompted stereotypes of Puerto Ricans as revolutionary-minded and as terrorists. Among the notorious incidents was the attempted assassination of President Truman in 1950 by Oscar Collazo and Griselio Torresola, two activists in the Puerto Rican Nationalist Party seeking independence from United States colonialism. While attempting to enter the Blair House in Washington D.C. where President Truman was staying, Collazo and Torresola killed one White House guard and wounded two others. Guards killed Torresola and injured Collazo. Truman ultimately commuted Collazo's death sentence to one of life imprisonment, and President Carter freed Collazo in 1979.

In 1954, four Puerto Rican Nationalists entered the public gal-

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<sup>20</sup> While some press reported Padilla's involvement with the Chicago street gang the Latin Kings, others suggested his former affiliation with the Chicago gang Maniac Latin Disciples. See *Suspect's Journey from Brooklyn to Al-Qaida a Mystery*, TIMES UNION (ALBANY), June 11, 2002, at A6; Daniel de Vise and Larry Lebowitz, *Terror Suspect's History Details Embrace of Crime*, MIAMI HERALD, June 16, 2002, at A1.

<sup>21</sup> Stewart M. Powell, *Terror Recruits in U.S. a Danger*, TIMES UNION (ALBANY), June 15, 2002, at A1. Many Latinas/os, such as myself, cringe at the news of a suspected Latino serial killer or child killer, mindful that a single individual can influence public conceptions of Latinas/os on the basis of their ethnicity. Cf. Leti Volpp, *Blaming Culture for Bad Behavior*, 12 YALE J.L. & HUMAN. 89 (2000) (suggesting that undesirable behavior when undertaken by a white person is viewed as an individual bad act but when performed by a person of color is reflective of a racialized culture).



lery overlooking the floor of the U.S. House of Representatives. One of them, Dolores Lolita Lebrón, shouted "Free Puerto Rico," and began shooting with her companions onto the House floor. Together, they wounded five Congressmen before being overpowered. They were sentenced to fifty years imprisonment. Also charged and convicted were several Puerto Ricans alleged to have engaged in seditious conspiracy in planning the attack.<sup>22</sup>

In the 1970s, the Puerto Rican nationalist group Fuerzas Armadas de Liberacion Nacional—Armed Forces of National Liberation (FALN) claimed credit for several bombings in Chicago, New York, and Puerto Rico, including the so-called Fraunces Tavern Bombing which killed four people and injured over fifty in a historic New York tavern.<sup>23</sup> Those convicted for the bombing campaign ultimately were given clemency by President Clinton in 1999.

Despite the gravity of the real-life violence in the 1950s through the 1970s, what went unpublicized was the counter-record of political violence and persecution carried out against pro-independence activists in Puerto Rico by Puerto Rican authorities and United States intelligence agencies such as the FBI. Indeed, from 1948 until 1957, Puerto Rican law criminalized the mere advocacy of independence.<sup>24</sup> These longrunning government efforts to sabotage the nationalist movement, highlighted by the bloody Ponce Massacre in 1937, have been well documented by Pedro Malavet.<sup>25</sup>

## II

### THE WAR ON TERRORISM AND ITS CONSEQUENCES FOR LATINAS/OS

Although primarily impacting Arab Americans, Arabs, and

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<sup>22</sup> Bradley T. Winter, *Invidious Prosecution: The History of Seditious Conspiracy—Foreshadowing the Recent Convictions of Sheik Omar Abdel-Rahman and His Immigrant Followers*, 10 GEO. IMMIGR. L.J. 185, 190-91 (1996).

<sup>23</sup> *Id.* See also RONALD FERNANDEZ, *LOS MACHETEROS: THE WELLS FARGO ROBBERY AND THE VIOLENT STRUGGLE FOR PUERTO RICAN INDEPENDENCE* (1987) (detailing the history of another independence group employing violence, Los Macheteros, considered a terrorist organization by the FBI).

<sup>24</sup> Lisa Napoli, Note, *The Puerto Rican Independentistas: Combatants in the Fight for Self-Determination and the Right to Prisoner of War Status*, 4 CARDOZO J. INT'L & COMP. L. 131, 156 (1996).

<sup>25</sup> Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1, 70-73 (2000).

Muslims,<sup>26</sup> the war on terrorism has harmed Latinas/os as well as certain other subordinated groups. Its consequences reach both undocumented and documented Latina/o immigrants, and beyond to Latina/o citizens.

*A. Non-Citizen Latinas/os: Baggage and Borders*

Some ramifications of the war on terrorism have affected non-citizen Latinas/os, the documented and undocumented alike. Because other commentators have addressed the undermining of civil rights protections of immigrants accomplished by the USA PATRIOT Act,<sup>27</sup> I will address different consequences here.<sup>28</sup>

Following the terrorist events of September 11, many called into question the patriotism of Latinas/os, especially of undocumented immigrants. In San Francisco and elsewhere, local authorities began to crack down on day laborers waiting for employment, most of them non-citizen Latinas/os. In early 2002, federal officials carried out Operation Tarmac, an immigration enforcement sweep aimed at undocumented (Latina/o) airport workers with access to restricted areas such as airplanes, runways, and flight meal kitchens.<sup>29</sup> As quoted above, the head of a Utah anti-immigrant group justified this federal round-up of undocumented workers at Salt Lake City's airport by answering whether "illegal" Mexican airport employees would take money from "Arab" terrorists to plant weapons on planes and then "head south" with their ill-gotten gains—"You betcha."<sup>30</sup> Doubting the patriotism of even documented but noncitizen La-

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<sup>26</sup> An estimated 25,000 Latinas/os are Muslim. Chris L. Jenkins, *Islam Luring More Latinos: Prayers Offer a More Intimate Link to God, Some Say*, Wash. Post, Jan. 7, 2001, at C1.

<sup>27</sup> E.g., Akram & Johnson, *supra* note 1, at 300; David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953 (2002).

<sup>28</sup> Apart from the consequences that I address below, arguably the most compelling short-term effect of the September 11 attacks and the consequent war on terrorism has been the economic impact on subordinated groups. Even second-generation Latinas/os have been hit hard by the economic recession's effect on manufacturing and retail trade, which accounts for forty percent of Latina/o employment. Latinas/os are also heavily employed in the ailing transportation and hospitality industries. In economic recessions, negative sentiments tend to emerge toward societal groups such as Blacks and Latinas/os who are thought to be unduly reliant on welfare and social services. Further, an open-ended war on terrorism may have long-term consequences in diverting government revenue otherwise available for social programs, thus building momentum toward mean-spirited welfare reform proposals.

<sup>29</sup> Juliet V. Casey, *Operation Tarmac Advocates: Hispanics Unfairly Targeted*, LAS VEGAS REVIEW-JOURNAL, Feb. 9, 2002, at B1.

<sup>30</sup> Murphy, *supra* note 7.

tinias/os and other immigrants, in the post-September 11 federal takeover of airport security, Congress imposed a citizenship requirement on airport screeners,<sup>31</sup> a substantial number of which are non-citizen Latinas/os.<sup>32</sup> In the months ahead, we can expect to hear increased calls for such citizenship requirements in the transportation industry as well as in other vulnerable industries.<sup>33</sup>

Launched in October 1994 by the Clinton Administration, the stepped-up border enforcement program known primarily as Operation Gatekeeper<sup>34</sup> has led to the deaths of countless Latina/o immigrants steered away from border crossings near urban centers to remote treacherous areas.<sup>35</sup> America's response to the terrorist events of September 11 will only increase the migrant carnage. Back in 1993, in setting the stage for Operation Gatekeeper's increase in border enforcement manpower, technology, and infrastructure, President Clinton had remarked at a press conference about the need to enhance border patrols to protect against terrorism:

The simple fact is that we must not, and we will not, surrender our borders to those [lazy Mexicans?] who wish to exploit our history of compassion and justice. We cannot tolerate those who traffic in human cargo, nor can we allow our people to be

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<sup>31</sup> Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat. 597 (2001).

<sup>32</sup> The Supreme Court has upheld the constitutionality of citizenship requirements for certain public employment positions. *See generally* Cabell v. Chavez-Salido, 454 U.S. 432 (1982) (upholding California statute requiring peace officers to be citizens against constitutional challenge by noncitizens refused employment as deputy probation officers); *Ambach v. Norwick*, 441 U.S. 68 (1979) (applying rational basis standard to uphold New York law forbidding certification as public schoolteachers of noncitizens who have not manifested an intent to apply for citizenship); *Foley v. Connelie*, 435 U.S. 291 (1978) (upholding New York law requiring citizenship for state police force against equal protection challenge).

<sup>33</sup> Consistent with the attention focused on non-citizens as terrorist threats, there has been a surge in applications for U.S. citizenship after September 11. Jonathan Peterson, *In Tragedy, an Emotional Surge in Citizenship Hopes*, L.A. TIMES, July 24, 2002, at A1 (reporting a 65% increase in national requests for citizenship following September 11, with an increase exceeding 100% in Los Angeles).

Related to citizenship requirements for employment are legislative efforts underway in several states (including Oregon) to target undocumented and even documented but noncitizen individuals seeking a driver's license. *See generally* Sylvia R. Lazos Vargas, *Missouri, The "War on Terrorism," and Immigrants: Legal Challenges Post 9/11*, 67 MO. L. REV. 775 (2002) (examining such proposals).

<sup>34</sup> Operation Gatekeeper is the reference to border build-up near San Diego; border build-up goes by different names in other urban areas, such as Operation Hold the Line in the El Paso region.

<sup>35</sup> *See generally* BENDER, *supra* note 6, at ch. 8.

endangered by those who would enter our country to terrorize Americans . . . .

Today, we send a strong and clear message. We will make it tougher for illegal aliens to get into our country.<sup>36</sup>

Despite the horrible toll resulting from border build-up, public opinion shortly before the September 11 tragedy nonetheless called for increased measures to hamper entry of Mexicans and other Latinas/os. A Time/CNN poll in May, 2001 determined that fifty-three percent of those sampled felt it should be made harder for people to cross the Mexican border into the United States while only fifteen percent favored easing restrictions.<sup>37</sup>

As public sentiment after September 11 builds toward establishing even tougher immigration restrictions at the Canadian and Mexican borders, migrating workers from Mexico and Central America will face a more perilous gauntlet in their efforts to reach jobs in the United States. Even prior to the terrorist attacks, President Bush supported increasing the number of Border Patrol agents. After the attacks, Bush called for doubling the funding for national security including border enforcement.<sup>38</sup>

Shortly before September 11, the Fox and Bush administrations were engaged in promising negotiations addressing the status of the estimated three or four million undocumented immigrants in the United States from Mexico. Mexico pushed for amnesty to legalize these immigrants, while Bush seemed to prefer a temporary "guest worker" program.<sup>39</sup> Negotiations between the governments broke down after September 11 as the economy slowed and U.S. priorities shifted toward heightened border security and against facilitating immigration. Indeed, September 11 reinvigorated anti-immigrant voices and has led to proposals in Congress to reduce immigration levels.<sup>40</sup>

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<sup>36</sup> JOSEPH NEVINS, OPERATION GATEKEEPER: THE RISE OF THE "ILLEGAL ALIEN" AND THE MAKING OF THE U.S.-MEXICO BOUNDARY 88-89 (2002).

<sup>37</sup> *Time/CNN Poll: Evolving Perceptions*, TIME, June 11, 2001, at 46-47.

<sup>38</sup> As part of the Enhanced Border Security and Visa Entry Reform Act of 2002, INS inspectors were added and border security technology and infrastructure enhanced. Pub. L. No. 107-173, 116 Stat. 543 (2002).

<sup>39</sup> Akram & Johnson, *supra* note 1, at 350.

<sup>40</sup> E.g., Securing America's Future through Enforcement Reform (SAFER) Act, H.R. 5013, 107th Cong. (2002) (proposing reduction in immigration levels by about twenty percent from current levels).

## *B. Consequences Reaching Citizen Latinas/os*

### *1. Racial Profiling*

For Arab Americans, their media and societal construction as terrorists has led to racial profiling, particularly in the transportation industry. A nationwide poll taken shortly after September 11 confirmed that thirty-five percent of respondents had less trust of Arab Americans after the attacks.<sup>41</sup> Translating to legal policy, over half surveyed favored subjecting Arabs, including Arab Americans, to “‘special, more intensive security checks’ before boarding planes in the United States.”<sup>42</sup> As a Louisiana Congressman put it, “If I see someone come in [the airport] and he’s got a diaper on his head and a fan belt around that diaper on his head, that guy needs to be pulled over and checked.”<sup>43</sup> Airport security experts urged Congress in 2002 to authorize screening of passengers based on racial and ethnic profiling, thus avoiding wasting attention on “low-risk passengers.”<sup>44</sup> Increased calls for border security after the September 11 terrorist attacks, as well as the practice of profiling Arab Americans and Arabs in settings ranging from Department of Justice investigatory interviews to airport passenger screenings, may signal invigorated use of profiling against Latinas/os, particularly in the effort to interdict undocumented immigrants. Since most of the public, as well as many public officials, have no foolproof means of identifying Arabs or Muslims based on sight, efforts to target them through profiling undoubtedly will ensnare Latinas/os, many of whom resemble Arabs. Shortly after September 11, for example, schoolchildren taunted both Latina/o and Arab students at some schools, apparently confusing Latinas/os with Arabs Americans, or simply lashing out at any non-White students.<sup>45</sup>

Racial profiling aimed at Latinas/os and African Americans

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<sup>41</sup> Pat Doyle, *Ethnic Profiling Revisited*, STAR-TRIB. (Minneapolis-St. Paul), Sept. 30, 2001, at 1A.

<sup>42</sup> THOMAS W. JOO, PRESUMED DISLOYAL: WEN HO LEE, THE WAR ON TERRORISM AND THE CONSTRUCTION OF RACE (manuscript at 32, on file with author).

<sup>43</sup> *Apology From Congressman*, N.Y. TIMES, Sept. 21, 2001, at A16; see also Liam Braber, Comment, *Korematsu's Ghost: A Post-September 11th Analysis of Race and National Security*, 47 VILL. L. REV. 451, 456 (2002) (noting the newfound willingness of lawmakers to deem Arab ethnicity relevant in terrorist screening).

<sup>44</sup> Eunice Moscoso, *Racial Profiling Needed at Airports, Expert Tells Congress*, S.F. CHRON., Feb. 28, 2002, at A10.

<sup>45</sup> Marlon Vaughn, *Parent: Hispanic Daughter Has Been Subject of Taunts*, FLINT J. (Michigan), Sept. 15, 2001, at A5; see also Diane Dietz, *Suspicion Makes for Fearful Patriots*, REGISTER GUARD (Eugene, Or.), Mar. 5, 2003, at D1 (reporting that

has long been used by some law enforcement officials in immigration enforcement, the war on drugs, and in traffic stops. Before September 11, political progress was evident in the campaign against racial profiling in police traffic stops. Community groups were negotiating with local police and, at the national level, President Bush and Attorney General Ashcroft had publicly condemned racial profiling in traffic stops.<sup>46</sup> The shift in public and government sentiment after September 11 toward profiling of Arabs and Muslims in anti-terrorist agendas halted the momentum against racial profiling in contexts such as traffic stops. Capturing popular sentiment, a law professor with whom I had previously debated the propriety of profiling stated matter of factly to me that the events of September 11 ratify racial profiling.

Alarminglly, use of racial profiling in aid of border security, immigration enforcement, and the war on drugs seems consistent with the newly established prerogatives of the war on terrorism. At the local law enforcement level, community groups resisting profiling in traffic stops must now contend with the bolstered reputation of law enforcement officials as national heroes in the post September 11 political climate. Further, in Florida, the Justice Department reached agreement with state officials to train state law enforcement personnel in enforcing federal immigration laws, suggesting the potential for racial profiling in federal immigration enforcement to pervade state law enforcement activities.<sup>47</sup>

## 2. Assimilation Pressures

Along with other LatCrit scholars,<sup>48</sup> I have written extensively about the modern English language movement that focused first on the adoption of Official English and English-Only laws by

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most victims in Lane County of verbal and physical attacks directed at Muslims and Arab Americans since September 11 are Hispanic).

<sup>46</sup> Akram & Johnson, *supra* note 1, at 351.

<sup>47</sup> Darryl Fears, *Hispanic Group Assails INS Enforcement Plan*, WASH. POST, July 23, 2002, at A3. See generally Lazos Vargas, *supra* note 33 (examining drawbacks of involving local authorities in federal immigration enforcement).

<sup>48</sup> See generally Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997); Juan F. Perea, *English-Only Rules and the Right to Speak One's Primary Language in the Workplace*, 23 U. MICH. J. L. REF. 265 (1990).

federal, state, and local government, and more recently on initiatives eradicating bilingual education. Despite some success at the state and local levels, national Official English/English-Only legislation has not been enacted, although in 1996 such legislation did pass the House.<sup>49</sup> Until derailed by national security concerns, the summer of 2001 found President Bush developing a guest worker proposal authorizing the entry of Mexican workers into the United States. Unlike prior proposals, the 2001 plan was to include a language component to require the learning of English. As one Bush aide described the English requirement, "Bush wants the American public to hear, 'These guys are coming here to work, not to be on the dole.'"<sup>50</sup>

The terrorist events of September 11 may both increase the pressure on Latinas/os to assimilate, as well as transform what assimilation should entail. Those events and the ensuing military response have led Americans to emphasize unity in culture and values, and to look with greater suspicion on immigrants and others considered to be foreigners. Under this invigorated assimilationist regime, Latinas/os can expect increased hostility against the Spanish language as a marker of foreignness. In the case of language, post-September 11 prerogatives to ensure national security and to detect terrorist plots are linked to justifications employed in the past to explain private language vigilantism. Tavern-owners, for example, have defended against legal challenges to their English language policies for customers by claiming that they were keeping peace in the bar by detecting "fighting words"—as one put it, "If they're speaking Spanish, how is my bartender going to know if they're cussing."<sup>51</sup> A similar justification led a Washington state trial judge to conclude a tavern owner had lawfully enforced an English-Only policy against her customers to ensure the safety of her property and others in the bar. As one tavern customer maintained: "They start speaking their own language and we don't know what they're saying. They could be insulting us, making fun of our

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<sup>49</sup> Catalina Camia, *House Passes Controversial English Bill*, DALLAS MORNING NEWS, Aug. 2, 1996, at A1; H.R. 123, 104th Cong. (1995).

<sup>50</sup> Mike Allen, *Bush's Mexican Guest Worker Plan to Push English*, WASH. POST, Sept. 1, 2001, at A8.

<sup>51</sup> Kathleen Monje, *Suit Accuses Tavern of Bias Against Spanish-Speakers*, OREGONIAN (Portland), Oct. 12, 1990, at D1 (describing lawsuit against an Oregon tavern with an English-Only policy for customers); see generally BENDER, *supra* note 6, ch. 6.

wives or figuring out a way to rob the place.”<sup>52</sup> With the judge’s finding of a non-discriminatory purpose, the tavern owner was insulated from liability under civil rights laws that require proof of purposeful discrimination.<sup>53</sup> This fear of conspiracies crafted in Spanish was even reflected in the 2001 blockbuster film *Training Day*, when undercover narcotics officer Denzel Washington warned his new partner that an ignorance of “Español” would get him killed: “These [Latino] motherfuckers out here are plotting all kinds of shit behind your back.”<sup>54</sup> Employers too have relied on similar justifications (such as protection against conspiracies for theft) in imposing workplace English-Only policies on their employees.<sup>55</sup>

No doubt the September 11 events will further legitimize these private language policies. Should a tavern owner be sued for its English language policy applicable to its customers, the owner might claim that it was trying to facilitate the role of its employees and English-speaking customers to detect the makings of terrorist plots. Similarly, an airline or other transit service might adopt an English language requirement for domestic travel to aid its passengers in detecting and preventing terrorist plans, as well as to ease the discomfort of some travelers who might view non-English speakers as dangerous foreigners conspiring toward disaster. Employers in the transportation or transportation-related industries, such as airline food caterers, as well as other vulnerable industries, such as power plant or chemical facilities, might too demand English from their employees in the interest of ensuring workplace security and safety.

In challenges to these rules under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race, color, sex, religion, and national origin,<sup>56</sup> employers will suggest a legitimate business necessity to justify their policy. Although the standards for survival of employer English language policies under Title VII disparate impact scrutiny are still

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<sup>52</sup> Aviva Brandt, *Tavern Sued Over English-Only Policy*, L.A. TIMES, Jan. 21, 1996, at A24.

<sup>53</sup> Aimee Green, *Yakima Tavern Owner Wins Case—but Judge Ruled that English-Only Sign is Insensitive*, SEATTLE TIMES, Jan. 16, 1997, at B3.

<sup>54</sup> TRAINING DAY (Warner Bros. 2001).

<sup>55</sup> Charles W. Hall, *Ease Policy on English, Stores Told*, WASH. POST, Mar. 5, 1995, at B3.

<sup>56</sup> 42 U.S.C. § 2000e-2 (2000).



emerging,<sup>57</sup> it seems apparent that language policies intended to ensure workplace safety for employees and customers are less likely to be invalidated than those not claiming a safety justification. For example, a compliance manual used by Equal Employment Opportunity Commission (EEOC) investigators suggests that a rule requiring all workers on an oil-rig deck to speak English to enable them to communicate quickly and respond effectively to emergencies would potentially be lawful.<sup>58</sup>

By contrast, the EEOC has viewed customer preference rationales as suspect and potentially illegitimate, at least where the employees are not speaking directly to the customer. The courts have upheld English language policies addressing direct communication with customers. The most notable decision involved the termination of a Latino disc jockey from a popular Southern California radio station after he refused to stop mixing Spanish into his radio broadcasts. A consultant for the radio station found the jockey's bilingual format hurt ratings among Anglo listeners by confusing them about the station's programming.<sup>59</sup> But a tougher question is presented when language policies govern conversation between employees that customers or other employees might overhear.<sup>60</sup> The EEOC manual suggests it would

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<sup>57</sup> Most English-Only rule challenges are brought under a disparate impact theory because of the difficulty of establishing discriminatory intent under a disparate treatment theory. Mark Colon, Note, *Line Drawing, Code Switching, and Spanish as Second-Hand Smoke: English-Only Workplace Rules and Bilingual Employees*, 20 YALE L. & POL'Y REV. 227, 233-34 (2002).

<sup>58</sup> Ann Davis, *English-Only Rules Spur Workers to Speak Legalese*, WALL ST. J., Jan. 23, 1997, at B1; see also U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, EEOC Compliance Manual (Dec. 2, 2002), <http://www.eeoc.gov/docs/national-origin.html> (last visited Apr. 16, 2003) (updating the EEOC policies).

<sup>59</sup> *Jurado v. Eleven-Fifty Corp.*, 813 F.2d 1406, 1408 (9th Cir. 1987) (upholding summary judgment against disc jockey who failed to produce sufficient evidence that station's English-Only policy was racially motivated or that he was discharged on the basis of discriminatory employment criteria).

<sup>60</sup> In Title VII disparate impact claims, the plaintiff must establish that the policy in question causes a discriminatory impact; once established, the employer must prove the challenged practice is consistent with a legitimate business necessity. Even if so proven, the plaintiff might still prevail by demonstrating a less discriminatory alternative exists. Most English-Only workplace policy challenges run aground at the first stage of the disparate impact analysis. Particularly troubling, some federal courts have taken the position that bilingual employees are not impacted by English-Only rules, as they can simply switch their language as required. *E.g.*, *Garcia v. Gloor*, 618 F.2d 264, 270 (5th Cir. 1980). *Gloor* involved a challenge by a bilingual lumber store employee who was fired for violating the employer's English-Only policy when he responded in Spanish to a question in English from another Latino employee about an item a customer had requested. Although the EEOC by

possibly be impermissible for a retailer to require English at all times because its customers object to overhearing its employees speaking Spanish.<sup>61</sup> Employers have sought to justify such rules in stressful environments such as hospitals and nursing homes<sup>62</sup> where hearing an unfamiliar language allegedly would intimidate an ailing patient. Thus, the employer tries to portray customer preference, or even prejudice, as a safety issue.<sup>63</sup> Presumably, in the aftermath of September 11, some employers might ground their customer preference policies in terms of workplace, customer, and even societal safety through the detection of terrorist plots.

As a consequence of the terrorist attacks, decreased tolerance for Third World traditions and practices in the United States, particularly religious practices, may foretell disapproval and distrust among Anglos of non-“traditional” Latina/o religions such as Santeria, and religious observances such as Dia de los Muertos, that may be regarded as capable of galvanizing “foreigners” to engage in anti-American acts. The Mexican holiday Cinco de Mayo, however, now commodified by the American liquor and tavern industries into a Mardi Gras-like celebration of alcohol, is unlikely to be seen as a threat to patriotism.

Reliance on appearance to identify those persons with the will to commit anti-American acts suggests a centripetal force toward homogeneity in dress among Latinas/os and others desiring to avoid profiling as anti-American. Mere baggy pant attire and “Pachuco” haircuts were enough to prompt attack from Anglo servicemen and civilians in the Zoot Suit Riots in 1940s Los Angeles. In the unsuccessful political campaign against California’s Proposition 187, Californians reacted negatively toward media coverage of rallies showing Latinas/os carrying Mexican flags.

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administrative guideline has determined that English-Only rules have a per se discriminatory impact on language minorities, the Ninth Circuit Court of Appeals has refused to apply the guidelines, forcing the plaintiff to establish disparate impact in order to compel the employer to come forward with a showing of a legitimate business purpose. *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1486 (9th Cir. 1993); Colon, *supra* note 57, at 233-34.

<sup>61</sup> Davis, *supra* note 58.

<sup>62</sup> See *Worker Fired for Speaking Spanish on Job*, SEATTLE TIMES, Aug. 20, 2002, at B2 (describing discharge of bilingual Latina for violating a nursing home’s English-Only policy).

<sup>63</sup> Stuart Silverstein, *Decision Won’t Speak to All Firms*, L.A. TIMES, June 21, 1994, at D2 (noting English language policies are common at hospitals in urban areas with large immigrant populations).

After September 11, Arab Americans especially understand the currency of the American flag, as many Arab American merchants felt compelled to fly the American flag out of fear for their economic and physical well-being.

In schools, the terrorist events and specter of war will increase pressures on curriculum and on teachers to create a unifying cultural bond among students, not only as to language but also by suppressing curriculum and historical lessons that could detract from the view of America and Americans as culturally and morally superior to enemies of the state. The risk of heightened subversion of history in public schools was brought home by the Pentagon proposal in February 2002 to deliberately plant false stories to influence foreign perceptions of the United States in the interest of the war on terrorism.<sup>64</sup> By early 2002, U.S. Supreme Court Justice Anthony Kennedy and the American Bar Association had launched a school curricular initiative, called "Dialogue on Freedom," under which lawyers and judges will visit high schools to instruct on core democratic values. Moved by his perception of a lack of moral outrage over the terrorist events by some high school students, Kennedy created the program to teach "fundamental values and universal moral precepts."<sup>65</sup>

As early as 1990, a national survey had found that sixty-one percent of Whites believed Hispanics were less patriotic than Whites.<sup>66</sup> Despite the recurrent questioning of Latina/o patriotism, Latinas/os have a distinguished war record in World War II and Vietnam. Gil Carrasco has described the loyalty of Latino soldiers fighting for the United States in World War II:

Throughout the course of World War II, no Latino soldier was ever charged with desertion, treason, or cowardice. The bravery of Latino troops was recognized in the many medals awarded to Mexican Americans, including the Congressional Medal of Honor (the United States' highest honor), the Silver Star, the Bronze Star, and the Distinguished Service Cross. . . . Because Mexican Americans seem to have gravitated to the most dangerous sections of the armed forces, they were over-

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<sup>64</sup> Greg Jaffe, *Rumsfeld Closes Pentagon Office Amid Concerns*, WALL ST. J., Feb. 27, 2002, at A4 (attributing office closure to news reports contending the office was designed to spread disinformation, which Rumsfeld claimed were inaccurate).

<sup>65</sup> Terry Frieden, *Justice Kennedy Offers Morals Program*, at <http://www.cnn.com/2002/LAW/01/25/scotus.morals/> (Jan. 26, 2002).

<sup>66</sup> *Poll Finds Whites Use Stereotypes*, N.Y. TIMES, Jan. 10, 1991, at B10.

represented on military casualty lists.<sup>67</sup>

As many as one-half million Latinas/os served in World War II, including 53,000 Latinas/os from Puerto Rico.<sup>68</sup> Although Latinas/os served in the Vietnam War in disproportionate numbers, one writer was struck by their invisibility “in the histories, oral histories, and literary anthologies of the Viet Nam War era.”<sup>69</sup> Perhaps this omission led then Presidential candidate Pat Buchanan to ask the astounding question in 1995, while questioning the inclusion of Latinas/os in affirmative action programs, of how the federal government could justify “favoring sons of Hispanics over sons of white America who fought in World War II or Vietnam?”<sup>70</sup> At the same time that Latinas/os were dying abroad in Vietnam, some Latinas/os, particularly Chicanas/os in Southern California, were rallying against the Vietnam War and the injustices they perceived, particularly that soldiers of color were being placed on the front lines and that the casualty rate for Mexican Americans in Vietnam was over fifty percent higher than their proportion to the total population in the United States.<sup>71</sup> Anti-war protest in East Los Angeles even led to a po-

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<sup>67</sup> See Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 195-96* (Juan F. Perea ed., 1997) (noting the irony that upon returning home, Mexican American soldiers from WWII faced discrimination—describing a Texas funeral parlor’s refusal to bury a decorated Mexican American soldier, and a restaurant owner’s refusal to serve a one-time sergeant who was Mexican American).

Apart from loyalty in military service, Americans saw Latina/o vocalists Enrique Iglesias and Gloria Estefan among those performing in the NBC special, *Concert for America*, broadcast September 11, 2002. New York City police officer Daniel Rodriguez, having sung *The Star Spangled Banner* at Yankee Stadium during the memorial service for attack victims, has since recorded a CD, *The Spirit of America*, containing the tenor’s recordings of *God Bless America*, *The Star Spangled Banner*, and other patriotic favorites.

<sup>68</sup> LUIS REYES and PETER RUBIE, *HISPANICS IN HOLLYWOOD: A CELEBRATION OF 100 YEARS IN FILM AND TELEVISION 20* (2000).

<sup>69</sup> AZTLÁN AND VIET NAM: CHICANO AND CHICANA EXPERIENCES OF THE WAR 1 (George Mariscal ed., 1999); see also JUAN RAMIREZ, *A PATRIOT AFTER ALL: THE STORY OF A CHICANO VIETNAM VET* (1999); SOLDADOS: CHICANOS IN VIET NAM (Charley Trujillo ed., 1990).

<sup>70</sup> Mariscal, *supra* note 69, at xii (quoting a column by Buchanan in the Washington Times, Jan. 23, 1995). Buchanan’s remarks may also reflect his inaccurate perception of Latinas/os as undocumented immigrants without roots in the United States.

<sup>71</sup> Richard Delgado & Vicky Palacios, *Mexican Americans as a Legally Cognizable Class Under Rule 23 and the Equal Protection Clause*, 50 NOTRE DAME LAW. 393, 411 (1975).

lice riot in 1970 which killed Rubén Salazar, a *Los Angeles Times* reporter writing about police brutality in the Chicana/o community.<sup>72</sup>

The presence of Latino soldiers on the front lines while the Latina/o community back home both protested and supported the war reflected the diversity of the Latina/o experience and the complex dynamics among Latinas/os with regard to assimilative pressures in American society. Some Latinas/os, well represented by conservatives Richard Rodriguez and Linda Chávez, advocate that Latinas/os should abandon their culture and embrace an Anglo vision of assimilation and acculturation that includes a no-compromise adoption of English, in essence jumping into the assimilation pool feet first. From this dark side of the assimilationist ideal come incidents such as the Latino in Arizona who within one week of September 11 shot and killed a bearded Sikh from India who wore a turban, shouting as he was arrested, "I stand for America all the way."<sup>73</sup> Other Latinas/os, particularly some activist Chicanas/os, want no part of the assimilation pool, preferring to plant their feet in a separatist vision of Aztlán, an independent Puerto Rico, or another sovereign nation dismissive of Americanization. Chicano activist Corky Gonzales penned the anthem for this anti-assimilationist view in his poem, *I Am Joaquín*, in which he refuses to be "absorbed."<sup>74</sup> Yet, as Laura Padilla has observed, "neither of these extreme views of assimilation represent the views of most Latinos."<sup>75</sup> Rather, most Latinas/os hold a more practical attitude toward assimilation that keeps both cultures afloat. Their attitude is reflected by a 1998 national survey concluding that Latinas/os overwhelmingly favor bilingual education programs designed to facilitate the learning of both Spanish and English.<sup>76</sup>

### 3. *The Eyes and Ears of Alert Citizens*

Vigilante violence directed at Latinas/os has a long history in

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<sup>72</sup> Mariscal, *supra* note 69, at 187.

<sup>73</sup> *Shootings Examined as Possible Backlash*, FORT WORTH STAR-TELEGRAM, Sept. 17, 2001, at 1.

<sup>74</sup> ED MORALES, *LIVING IN SPANGLISH: THE SEARCH FOR LATINO IDENTITY IN AMERICA* 81-82 (2002) (reprinting poem).

<sup>75</sup> Laura M. Padilla, "*But You're Not a Dirty Mexican:*" *Internalized Oppression, Latinos & Law*, 7 TEX. HISP. J. L. & POL'Y 59, 107 (2001).

<sup>76</sup> RONALD SCHMIDT, SR., *LANGUAGE POLICY AND IDENTITY POLITICS IN THE UNITED STATES* 80 (2000).

the United States. A Texas historian has recounted the scores of lynchings and mutilations of Mexicans in Texas in the 1800s.<sup>77</sup> In the 1850s, many Mexicans were whipped, branded, or hung by vigilantes who enforced laws in the California gold rush days.<sup>78</sup> One vigilante at the time proffered that “To shoot these Greasers ain’t the best way. Give ’em a fair trial, and rope ’em up with all the majesty of the law. That’s the cure.”<sup>79</sup>

These attitudes of indifference toward Latina/o life have survived into the present day, with “wetbacks” and “illegals,” or those perceived to be undocumented, as the primary targets of violence and threats of violence. In the mid-1990s, vigilante groups in California began to police the San Diego airport as the “Airport Posse” to search for and to intimidate any arriving undocumented immigrants. Wearing blue and yellow T-shirts with the words “U.S. Citizen Patrol” and a Border Patrol-like logo, these vigilantes patrolled the airport taking notes, reminding airport personnel to enforce the FAA rule requiring proper photo identification, and inspecting and subjecting those with a Latina/o appearance to scrutiny as if they were a prison chain-gang.<sup>80</sup> The Border Patrol and the INS took no official position against the patrolling, with one INS spokesperson suggesting “[They’re] exercising their constitutional right to be at the airport, just like the guy playing his tambourine.”<sup>81</sup> In the earlier but similarly minded “Light Up the Border” campaign, vigilantes in Southern California would gather by the hundreds in 1989 and 1990 to shine their car headlights at the border toward Tijuana to deter night crossings—eventually they were met by counter-demonstrators holding up mirrors and reflective foil.<sup>82</sup>

Since 1994, federal border enforcement policies have directed migrants away from urban centers and freeways in Southern California and toward the sparsely populated California and Ari-

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<sup>77</sup> See ARNOLDO DE LEÓN, *THEY CALLED THEM GREASERS: ANGLO ATTITUDES TOWARD MEXICANS IN TEXAS, 1821-1900* (1983).

<sup>78</sup> LEONARD PITT, *THE DECLINE OF THE CALIFORNIOS: A SOCIAL HISTORY OF THE SPANISH-SPEAKING CALIFORNIANS, 1846-1890*, at 70 (1966).

<sup>79</sup> *Id.* at 71.

<sup>80</sup> See generally, BENDER, *supra* note 6, at ch. 8.

<sup>81</sup> Tony Perry, *Citizens on the Lookout for Illegal Migrants*, L.A. TIMES, May 19, 1996, at A3; Vincent J. Schodolski, “Citizens Patrol” Angers Hispanics in San Diego, CHICAGO TRIBUNE, May 26, 1996, at C4.

<sup>82</sup> E.g., William Branigin, *Violence, Tensions Increasing Along the U.S.-Mexican Border*, WASH. POST, June 25, 1990, at A16.

zona deserts.<sup>83</sup> This increased foot traffic led ranchers in Arizona to arm themselves and to initiate vigilante patrols—first as property owners ostensibly to protect against property damage, later as activists to draw attention to what they regarded as a foreign invasion and a threat to national security.<sup>84</sup> A leaflet surfaced in April 2000 that invited volunteers to park their recreational vehicles on Arizona border ranches and to help patrol them as part of the “American Way Team” while “enjoying the great southwestern desert at the same time.”<sup>85</sup> In late 2000, volunteers in Texas formed the organization Ranch Rescue and solicited for “volunteers from all over the USA” to help protect border ranches from trespassing immigrants.<sup>86</sup>

The most prominent Arizona vigilante ranchers are brothers Roger and Donald Barnett who patrolled a 22,000 acre ranch with binoculars, an M-16 automatic rifle, and a tracking dog.<sup>87</sup> In 2000, they boasted of capturing as many as 170 “illegals” in one day and turning them over to federal authorities.<sup>88</sup> As Roger Barnett described his quarry:

They move across the desert like a centipede, 40 or 50 people at a time . . . You always get one or two [of those caught] that are defiant . . . One fellow tried to get up and walk away, saying we’re not Immigration. So I slammed him back down and took his photo. “Why’d you do that?,” the illegal says, all surprised. “Because we want you to go home with a before picture and an after picture—that is, after we beat the s[hit] outta you.” You can bet he started behavin’ then.<sup>89</sup>

Although Latina/o immigrants have been the primary targets of vigilante violence directed at Latinas/os, this violence reaches all corners of Latina/o life in the United States. In early 2002, for example, dozens of Latina/o lawyers along with activists and community groups throughout the United States, received a hate letter ending with, “And by the way, watch out for the white

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<sup>83</sup> See generally, BENDER, *supra* note 6, at ch. 8.

<sup>84</sup> *Id.*

<sup>85</sup> Jose Palafox, *Arizona Border: Immigration Tensions Bring Out the Worst and the Best in Human Nature*, at <http://www.us-Mex.org/borderlines/updates/2000/July07Immigrat.html#bookmark2> (last visited Mar. 23, 2001).

<sup>86</sup> Edward Hegstrom, *Volunteers Plan Armed Border Patrols*, HOUSTON CHRONICLE, Nov. 30, 2000, at A37.

<sup>87</sup> Tim McGirk, *Border Clash*, TIME, June 26, 2000, at 24.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

powdery stuff in this envelope.”<sup>90</sup> Each envelope contained white powdery granules that tested negative for anthrax.<sup>91</sup>

The government’s response to the terrorist events of September 11 will only aggravate the public’s inclination to assume its role as vigilantes, enforcing media-fueled conceptions of legal obligations and the public good. Unfortunately, this vigilante climate will ensnare many innocent parties, including Latinas/os. Because undocumented immigrants are portrayed as a national security threat, as would-be terrorists, it is likely that the public will see its role as extending to the enforcement of open-ended anti-immigrant agendas.<sup>92</sup> In this frenzied public and private hunt for would-be terrorists and those who might aid them, vigilante ranchers in the Southwest, rather than being criticized for

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<sup>90</sup> Lisa Fernandez, *Latino Groups Receive Hate Mail*, SAN JOSE MERCURY NEWS, Mar. 13, 2002, at B1.

<sup>91</sup> *Id.* The Sacramento office of MALDEF provided me with a copy of this letter, which is signed by Vashudey Chauhan, an apparent forgery of a signature of someone who is not a suspect. Touching on most every negative conception of Latinas/os, the hate letter provides in relevant part:

You stupid, fucking, spic turds. . . .

I am so sick of Hispanics—spics for short—complaining about being discriminated against, when in fact you owe all of what you have to the generosity and capable leadership of the white population at large.

If it weren’t for affirmative action, you would probably all still be bean pickers and prostitutes.

Every time you try to do something on your own, you fuck up. Take bilingual education, for example. Now we are going to have to admit a whole generation of spics into college who will be even stupider than they would have been otherwise. . . .

[S]ince you grease balls still can’t run your own countries effectively, like rats escaping a sinking ship, we get more and more of your wet back asses to care for. If that isn’t bad enough, your whore-women can’t keep from getting knocked up and producing more mongrel-spics that the rest of us have to provide welfare for.

I never had anything given to me for nothing, and I am college educated and own my own house that is big enough to hold an entire barrio of you useless drug pushers.

Letter to MALDEF (actual identity of author unknown), Apr. 5, 2002 (on file with author).

<sup>92</sup> The founder of one border vigilante organization, Civil Homeland Defense, warned in March 2003 at the onset of war in Iraq that its armed border militia would substitute for the “void in [n]ational security” left by reassignment of Border Patrol agents to wartime prerogatives. Founder Chris Simcox declared a “message to the world” of “Do not attempt to cross the border illegally; you will be considered an enemy of the state; if aggressors attempt to forcefully enter our country they will be repelled with force if necessary!” E-mail from Chris Simcox to LARED-L@list.serve.cyberlatina.net (Mar. 20, 2003) (on file with *Oregon Law Review*).



abusing the human rights of vulnerable immigrants, might be valorized as heroes helping to control border "security breaches." Citizens employing profiling to harass those with Latina/o appearances by seeking to confirm their citizenship might be seen as carrying out the vital function of ensuring that those present in the United States who appear to be foreigners are not interlopers with terrorist agendas. In President Bush's 2002 State of the Union Address, he called upon the "eyes and ears of alert citizens" to help defend against terrorism.<sup>93</sup> Bush gave the example of the airline crew and passengers who subdued the so-called shoe bomber. Such requests for airline passengers to assist in detecting and preventing terrorist plots serve to deputize the public in law enforcement practices. Will the events of September 11 revive the Airport Posse patrols, with Latinas/os among their primary targets?

Further, consider the implications of Bush's call for citizens to look and listen alertly. Harboring false conceptions of Latinas/os as unpatriotic, as criminally inclined, as drug smugglers and drug users, and as predominantly non-citizen and even "illegal," our citizenry might be inclined to direct their eyes toward those of a stereotypical Latina/o appearance. At the same time, their ears may be alerted to the speaking of Spanish as the mark of a secretive terrorist plot (or at least as indicating a scheme to "rob the place"). Already the subject of public suspicion and of doubt over their patriotism, Latinas/os can expect greater scrutiny in not just the eyes and ears, but in the minds of the American citizenry.

### III

#### REIMAGINING NATIONHOOD IN THE WAKE OF SEPTEMBER 11

In the chaos following the September 11 tragedies, Americans sought desperate comfort in the idea of nationhood, if only as defined by unity against a common enemy. It seems evident that

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<sup>93</sup> In March 2003, Bush's comments on the ramifications of a potential Mexico vote in the U.N. Security Council against war with Iraq prompted concerns that Bush had stirred up backlash sentiment among private citizens toward Mexicans and Mexican Americans. See Marcelo Ballve, *Hispanics Fear Anti-Immigrant Backlash After Bush Remarks*, Pacific News Service, Mar. 12, 2003 (reporting that Bush pointed to grassroots backlash against the French when asked about the possible repercussions for Mexico should it fail to back the U.S. in Security Council resolutions on Iraq).

even before September 11 we were struggling with articulating a common vision of what it means to be American. For some, anti-immigrant sentiments in the 1990s forged a narrow Eurocentric vision of nationhood based on commonalities of history and heritage that viewed immigrants as disruptive anti-nation forces. September 11 bolstered proponents of this ancestral unity.<sup>94</sup> By contrast to homegrown terrorism by such operatives as Timothy McVeigh, these latest atrocities could be blamed on immigrants, on foreigners, on “Others”<sup>95</sup>—on those who speak different languages, practice different religions, and adhere to different traditions, customs, and mores than those an ancestral vision would countenance. Under this homogenous conception of nationhood, the racial profiling of nation-threats, the strengthening of assimilative pressures, and the militarizing of borders all appear natural policies toward ensuring ancestral and cultural unity.

Here, I add my voice to the faint chorus of those seeking to articulate a new expansive vision of nationhood—one of cultural diversity. As Bill Ong Hing has described it, this multicultural definition of America and Americans must “embrace differences rather than attack them. It must respect diversity rather than disregard it. It must appeal to a sense of unity that incorporates multiculturalism rather than the illusion of Eurocentric unity . . . .”<sup>96</sup> Consistent with such a vision, Americans must forge a humanistic unity marked by the respect of different cultures and their contribution to America, a recognition of human rights, and an acknowledgment of the invigorating effects of immigration. This multicultural vision of nationhood would regard racial profiling with great suspicion, would consider the human consequences of militarizing and securing borders on immigrants drawn to the United States by employment opportunities rather than by evil intent, and would resist the pressures of assimilation

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<sup>94</sup> E.g., PATRICK J. BUCHANAN, *THE DEATH OF THE WEST: HOW DYING POPULATIONS AND IMMIGRANT INVASIONS IMPERIL OUR COUNTRY AND CIVILIZATION* 133, 143-46 (2002) (questioning what constitutes a nation given the immigrant “invasion”).

<sup>95</sup> Shortly after the September 11 attacks, the Rev. Jerry Falwell singled out gays, lesbians, and other marginalized groups as having contributed to the attacks. Timothy George, *Houses of Worship: Falwell and Folly*, WALL ST. J., Sept. 21, 2001, at W13.

<sup>96</sup> BILL ONG HING, *TO BE AN AMERICAN: CULTURAL PLURALISM AND THE RHETORIC OF ASSIMILATION* 177 (1997).

that purport to pronounce one culture and language as superior and the rest as anti-American and subversive.

In a nation valuing multiculturalism and human rights, the constitutional rights of due process and freedom from unreasonable search and seizure would not so readily be tossed onto the bonfire of rights flaring since September 11. In this post-September 11 climate of intolerance and self-censorship in which those questioning the wisdom of the war on terrorism and the military campaign against Iraq are regarded as terrorists themselves, the protections of the First Amendment seem distant. By contrast, a nation valuing cultural diversity would view hate speech directed at subordinated groups as unacceptable in a multicultural society—indeed, as domestic terrorism striking at the core of America's multicultural soul.

While reimagining nationhood, we must look beyond our national borders. Latina/o commentators Patrisia Gonzales and Roberto Rodriguez have reminded us that we hold the “opportunity not simply to ask what it means to be an American and what kind of nation we want to live in.”<sup>97</sup> As well, we “face a historic opening to explore what it means to be human and what kind of world we want to live in.”<sup>98</sup> Best wishes for peace.

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<sup>97</sup> Patrisia Gonzales & Roberto Rodriguez, *Moving One Step Closer* . . . (Sept. 6, 2002), at [http://www.voznvestra.com/Americas/\\_2002/\\_September/6](http://www.voznvestra.com/Americas/_2002/_September/6) (articulating a world vision of respect for all human life).

<sup>98</sup> *Id.*